

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Sid Brooks

In re:)	
DONNA J. COHAGAN-DEUBEL,	)	Case No. 01-21596 SBB
SS#506-46-4407,	)	Chapter 7
Debtor.)	
DEL W. DANIELS,	)	Case No. 00-20206 SBB
SS#007-38-7509,	)	Chapter 13
Debtor.)	
RHONDA J. TAWNEY,	)	Case No. 01-12744 SBB
SS#524-15-2070,	)	Chapter 13
Debtor.)	
SUSAN ROYBAL,	)	Case No. 01-13419 SBB
SS#522-80-3021	)	Chapter 13
Debtor.)	
KIRK S. MARTIN,	)	Case No. 01-14848 SBB
SS#506-46-4407 and	)	Chapter 13
DEBRA S. MARTIN,)	
SS#523-08-1657)	
Debtors.)	
TRACY L. BLEA,	)	Case No. 01-16845 SBB
SS#524-21-3400,	)	Chapter 7
Debtor.)	
MARJORIE L. NICHOLAS	)	Case No. 01-18937 SBB
SS#506-46-4407,	)	Chapter 13
Debtor.)	
DEBORAH JOYCE,	)	Case No. 01-20285 SBB
SS#110-42-7940,	)	Chapter 13
Debtor.)	
LUIS JUAN RODRIGUEZ,	)	Case No. 01-22160 SBB
SS#521-17-6695 and	)	Chapter 13
ANGELA MARIE ARCHULETA,)	
SS#524-13-4799)	
Debtors.)	
KELLY J. BAKKE aka Kelly Crumrine,	)	Case No. 01-23250 SBB
SS#506-46-4407	)	Chapter 13
Debtor.)	
TERRY GENE PLATTS	)	Case No. 00-17657-SBB
SS#524-80-6969	)	Chapter 7
Debtor.)	

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on various pleadings related to issues raised in Case No. 01-21596-SBB, captioned *In re Cohagen-Deubel*, including but not limited to the following:

1. United States Trustee's Motion for Review of Fees Under 11 U.S.C. § 329; Request for Order to Show Cause Why Sanctions Should Not be Imposed for Violation of Fed.R.Bankr.P. 9011(b) and Request for Hearing filed September 17, 2001 ("UST Motion").
2. United States Trustee's Supplemental Facts in Support of UST Motion filed September 24, 2001 ("UST Supplemental Facts").
3. Response by Conrad Kindsfather to UST Motion filed September 24, 2001.
4. Amended Response to UST Motion and Response to UST Supplemental Facts filed December 11, 2001.
5. United States Trustee's and Conrad Kindsfather's Stipulated Facts filed December 13, 2001.
6. Conrad Kindsfather's Brief filed December 21, 2001.
7. Conrad Kindsfather's Summary of Open Cases and Fees Received by Conrad Kindsfather, submitted to the Court as Respondent's Exhibit N, at the hearing held January 10, 2002.

The Court, having reviewed the files and all related pleadings, conducted hearings, and having heard and considered the evidence before the Court, enters the following findings of fact, conclusions of law and order.

I. Issues Presented and Summary of Conclusions

Conrad R. Kindsfather, an attorney regularly practicing before this Court, developed a unique procedure for securing payment of his attorney fees as a debtor's bankruptcy counsel. At the time he was retained by a client to serve as debtor's counsel he would require his clients to sign a "Notice of Claim and Attorneys' Lien" ("Lien Statement"). On various occasions, after his clients had filed their petition in bankruptcy, Mr. Kindsfather would file a Lien Statement and/or redeem his client's property when in foreclosure, and in some cases, would obtain title to his client's property, after which he would

sell the property for profit. At times, the profit was far in excess of the attorney fees earned, applied for, and/or approved by the Court.

Mr. Kindsfather did not disclose this practice to anyone, at any time, or under any circumstances, until after the problem was raised by the United States Trustee. It was not revealed in any documents filed in any of Mr. Kindsfather's numerous cases in this Court for two years, until the United States Trustee asked for Court intervention and imposition of sanctions.

The central issue raised in the pending UST Motion is whether the practice undertaken by Mr. Kindsfather was in violation of the Bankruptcy Code and/or Federal Rules of Bankruptcy Procedure and, if it was, then what sanctions are reasonable and appropriate under the circumstances?

The Court concludes that Mr. Kindsfather knowingly and willfully violated certain sections of the Bankruptcy Code and Bankruptcy Rules when he failed to disclose that he obtained Lien Statements on his clients' homes, and in some cases, acquired title to and/or then sold the homes at a profit. As a result of these violations, the Court will impose sanctions which, in pertinent part, include:

1. Disgorgement of all fees received by Mr. Kindsfather in all cases pending before the undersigned Judge in which Mr. Kindsfather took an undisclosed Lien Statement.
2. A sanction against Mr. Kindsfather in the amount of \$20,000.00 which shall serve as both a deterrent and a penalty for the undisclosed and improper conduct of counsel.
3. Disgorgement of all profit, or net proceeds, to the Chapter 7 Trustee, which Mr. Kindsfather received from the redemption and sale of his client's home in *In re Platts*, Case No. 00-17657-SBB, an amount estimated to be \$9,665.20.
4. A requirement that with respect to *all* cases, whether closed or open, filed in the United States Bankruptcy Court for the District of Colorado, in which Mr. Kindsfather represented the debtor(s) *and* in which cases Mr. Kindsfather obtained a Lien Statement, or otherwise took an interest in or title to property of his clients and failed to disclose the Lien Statement or interest or title, Mr. Kindsfather shall file with the Court, within thirty (30) days after the date of this Order, in each such case, for consideration by the judge assigned to the case,
 - a. a statement disclosing relevant facts and information regarding attorney fees requested by, or paid to him, Lien Statements obtained, fee agreements with clients, and other matters pertaining to counsel's attorney fees; and

- b. financial, transactional, loan, and/or closing documents, if any, regarding each piece of real property to which Mr. Kindsfather acquired an interest, if any, or title.
- 5. A requirement that Mr. Kindsfather take 10 (ten) hours of continuing legal education courses within the next six months, which courses shall embody, as a central theme or topic, legal ethics and professionalism of the practice of law. Mr. Kindsfather shall certify, in writing, his completion of that requirement on or before November 15, 2002, or he shall be barred from filing further cases before this Court.

II. Procedural Posture of the Case

It is alleged in the UST Motion and UST Supplemental Facts that Mr. Kindsfather was an undisclosed creditor of the Debtor, Ms. Cohagan-Deubel, by virtue of addenda to fee agreements entered into with the Debtor in both her current Chapter 7 case, Case No. 01-21596-SBB, and in a prior Chapter 13 case, Case No. 01-10943-SBB. Before the filing of the current Chapter 7 case, Ms. Cohagan-Deubel also signed an agreement to convey personal property to Mr. Kindsfather as payment for his fees. Before the filing of the prior Chapter 13 case, Mr. Kindsfather had obtained a Lien Statement against Ms. Cohagan-Deubel's home, which Lien Statement was recorded after dismissal of the Chapter 13 case, but before filing of the Chapter 7 case. This interest was *not* disclosed in any of Ms. Cohagan-Deubel's Schedules and Statements, nor in Mr. Kindsfather's Attorney Fee Disclosure, in either the Chapter 7 or the Chapter 13 case.

The United States Trustee sought review of Mr. Kindsfather's fee practices under 11 U.S.C. § 329 and Fed.R.Bankr.P. 2017(b), and requested an Order to Show Cause why sanctions should not be imposed. In the UST Supplemental Facts, information is presented regarding five other cases in which Mr. Kindsfather acquired his clients' homes by redeeming liens for attorney fees. This latter information was presented to "establish a pattern of conduct for the Court to consider when determining fees to award or sanctions to impose." [UST Supplemental Facts, ¶ 3.] (*See* Appendix B, attached.)

On September 20, 2001, this Court issued an Order to Show Cause and Notice of Show Cause Hearing based on the allegations in the UST Motion and set this matter for an evidentiary hearing on December 17, 2001, to consider "whether [Mr. Kindsfather] has undertaken conduct which is or may be in violation of 11 U.S.C. § 328 or Fed.R.Bankr.P. 2016 and/or 9011, or why the Court should not otherwise exercise its authority pursuant to 11 U.S.C. §§ 105 and 329 and Fed.R.Bankr.P. 2017 and 9011."

On October 31, 2001, the United States Trustee filed his Motion to Consolidate Hearings on Review of Attorneys' Fee of C.R. Kindsfather ("Consolidation Motion") in the *Cohagan-Deubel* case, and in all other open bankruptcy cases before this Court for which Mr. Kindsfather is counsel of record for the debtor. The Consolidation Motion was filed because Mr. Kindsfather had taken a Lien Statement in many, if not most, of his cases and both the United States Trustee and Mr. Kindsfather agreed that the common legal and factual issues in the cases should be resolved in one hearing before one judge.¹

At a status conference on November 13, 2001, the Court ruled that the December 17, 2001 hearing would deal with the issues as they relate to those cases before the undersigned Judge: *In re Cohagan-Deubel*, Case No.-01-21596-SBB together with: *In re Daniels*, Case No. 00-20206-SBB; *In re Tawney*, Case No. 01-12744-SBB; *In Re Martin*, Case No. 01-14848-SBB; *In re Blea*, Case No. 01-16845-SBB; *In Re Nicholas*, Case No. 01-18937-SBB; *In re Joyce*, Case No. 01-20285-SBB; *In re Barrientos*, Case No. 01-21929-SBB;² and *In re Bakke*, Case No. 01-23250-SBB.

On December 6, 2001, Mr. Kindsfather filed amendments in 33 Chapter 13 cases, including those mentioned in the UST Motion, to disclose the fee arrangements in those cases and, where applicable, his status as a creditor. On December 11, 2001, Michael Katch, as counsel for Mr. Kindsfather, filed an Amended Response to UST Motion and Response to UST Supplemental Facts. On December 13, 2001, in accordance with the September 20, 2001 Show Cause Order, Mr. Kindsfather submitted the fee agreements, letters advising clients of liens, and Lien Statements for 37 bankruptcy cases filed by him in 2001.

An evidentiary hearing was held in this matter on December 17, 2001. At the hearing, Michael Katch appeared for Mr. Kindsfather and Kelly Sweeney appeared on behalf of the United States Trustee.³ At the hearing, the parties requested that the matter stand submitted as to all of the open cases before this Court in which Mr. Kindsfather is counsel of record for the debtor and engaged in the practices at issue. *See, supra* note 1.

¹ The parties also requested this Court take jurisdiction of and rule on all of the cases pending before other Judges of this Court in which Mr. Kindsfather is counsel of record for debtor. This Court declined to do so. Rather, this Order pertains only to those cases before the undersigned Judge; it may be used as a standard, or template, by the other Judges of this Court in considering assessment of sanctions for the same or similar conduct in cases pending before them. (*See* Appendix A.) In each of the cases before the other Judges, the facts, fees charged, and amounts paid will vary, and the profits or income earned by Mr. Kindsfather from redemption and then sale of his clients' homes must be considered, on a case-by-case basis. (*See* Appendix B.)

² *In re Barrientos* is not included in the caption to this Memorandum Opinion inasmuch as a Lien Statement was not taken in the case. *See*, ¶ 33 of parties' Stipulated Facts, p.13 *infra*.

³ Sonja Becker, Ms. Cohagan-Deubel's new attorney, also appeared at the hearing, but did not participate in the presentation of evidence or arguments.

On January 10, 2002, an additional hearing was held for the purpose of receiving evidence and testimony regarding the fees actually received by Mr. Kindsfather in the cases before this Court, and regarding Mr. Kindsfather's personal financial situation, to allow a ruling on an amount of sanctions, if any, to be entered. Two additional cases, *In re Rodriguez*, Case No. 01-22160-SBB, and *In re Roybal*, Case No. 01-13419-SBB, were disclosed to this Court at the January 10, 2002 hearing. Accordingly, this Memorandum Opinion addresses and applies to the following cases: *In re Cohagan-Deubel*, Case No.-01-21596-SBB; *In re Daniels*, Case No. 00-20206-SBB; *In re Tawney*, Case No. 01-12744-SBB; *In re Roybal*, Case No. 01-13419-SBB; *In Re Martin*, Case No. 01-14848-SBB; *In re Blea*, Case No. 01-16845-SBB; *In Re Nicholas*, Case No. 01-18937-SBB; *In re Joyce*, Case No. 01-20285-SBB; *In re Rodriguez and Archuleta*, Case No. 01-22160-SBB; *In re Bakke*, Case No. 01-23250-SBB; and *In re Platts*, Case No. 00-17657-SBB.

III. Findings of Fact

A. Parties' Stipulated Facts.

Facts stipulated to by the parties include the following:⁴

FACTS RELATED SOLELY TO THE COHAGAN-DUEBEL MATTER

1. Ms. Cohagan-Deubel (also referred to as the "Debtor") filed a Chapter 13 petition for relief on January 29, 2001, Case No. 01-10943 SBB. The case was filed in part to save the Debtor's residence upon which a foreclosure sale was set.
2. Conrad R. Kindsfather, Esq., was counsel to the Debtor in Case No. 01-10943 SBB. Mr. Kindsfather filed a Rule 2016(b) Statement noting that \$1,500 was the agreed upon fee, of which \$165 had been paid and \$1335 remained to be paid. There were no statements regarding interest on unpaid sums. The response to SOFA question 9 states that the \$165 was paid 1/01. A copy of the Rule 2016(b) statement is Stipulated **Exhibit 1**.

⁴ The following facts are recited, verbatim, from the parties' joint Stipulated Facts filed on December 13, 2001, as modified on the record at commencement of the hearing held December 17, 2001. The Court's added comments, inserted within the text in this section, are denoted by brackets.

3. In order to secure the payment of his fees for the Chapter 13 case, Mr. Kindsfather obtained an attorney lien statement on the Debtor's residence, signed with the name Donna J. Deubel on January 29, 2001. The statement says in relevant part:

I am in full agreement with the attorney lien and that I hereby, with full knowledge and consent, waive the homestead exemption pursuant to § 38-41-201, 202 C.R.S., with regard to the aforementioned property and this lien.

A copy of the attorney lien statement is Stipulated **Exhibit 2**.

4. There is no disclosure of the attorneys' lien on any document in Case No. 01-10943 SBB. (By agreement, Mr. Kindsfather did not amend his Rule 2016(b) Statements in closed cases).
5. No order awarding fees to Mr. Kindsfather for his work in the Chapter 13 case entered nor was a plan confirmed prior to dismissal of the case on June 4, 2001 (the case was closed on July 26, 2001). A copy of the docket sheet from Case No. 01-10943 SBB is Stipulated **Exhibit 3**.
6. On June 8, 2001, Mr. Kindsfather recorded a Notice of Claim and Attorneys' Lien against the Debtor's residence in Douglas County for the \$1,335 in fees remaining, plus interest of 18%. A copy of the recorded lien is Stipulated **Exhibit 4**.^[5]
7. On August 3, 2001, Mr. Kindsfather filed a Notice of Intent to Redeem and Affidavit of Amount Owed with the Douglas County Public Trustee regarding the Public Trustee's Foreclosure Sale dated May 30, 2001 on the Debtor's residence. A copy of the filed notice is Stipulated **Exhibit 5**.
8. Ms. Cohagan-Deubel through Mr. Kindsfather filed a voluntary petition for Chapter 7 relief under Title 11 of the United States Code on August 9, 2001, Case No. 01-21596 SBB. The petition was filed to obtain an

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At the hearing held December 17, 2001, Exhibit 4 was not introduced.

extension of the Debtor's redemption period so that she could obtain refinancing and retain her residence.

9. Mr. Kindsfather originally represented Ms. Cohagan-Deubel in Case No. 01-21596 SBB. Mr. Kindsfather filed a Fed. R. Bankr. P. 2016(b) Statement that said he had received \$500 in compensation for the case before the case was filed. This is consistent with the disclosure on the Statement of Financial Affairs ("SOFA") response to question 9 stating that \$500 was paid on 8/01. There is no reference to any other money or property transferred in consideration of debt relief consultation or preparation within the year before the case was filed. The statement is Stipulated **Exhibit 6**.
10. There is an Addendum to the Fee Agreement for the Chapter 7 representation that was not filed with the Court by Mr. Kindsfather while he was counsel. It states in relevant part that the debtor conveys "to Conrad R. Kindsfather as payment in full for attorneys' fees on my chapter 7 bankruptcy, my RCA Home Theater with a 59" (approximate size) television, and agree to deliver the same to 5613 Olde Wadsworth Boulevard, Arvada, Colorado, on or before August 30, 2001." The agreement provides the Debtor with an option to buy the items back on or before August 30, 2001, with a \$500 payment to Mr. Kindsfather. The addendum is Stipulated **Exhibit 7**.
11. The items were not conveyed to Mr. Kindsfather before or after the case was filed, nor did he receive the \$500 fee.
12. Schedule D, filed in this Case No. 01-21596 on August 9, 2001, lists three secured claims, all owed to Beneficial Household Finance. Mr. Kindsfather's lien is not listed on Schedule D.
13. Schedule F, filed in this Case No. 01-21596 on August 9, 2001, and the amended version filed on September 6, 2001, do not list Mr. Kindsfather as a general unsecured creditor.
14. There is no disclosure on any of the pleadings filed in Case No. 01-21596 that Mr. Kindsfather was a creditor of the Debtor in the initial filings or that he held any interest in personal property of the Debtor for the payment of fees.

15. The Statement of Intention, filed in this Case No. 01-21596 SBB on August 9, 2001, states that the Debtor will redeem the Beneficial Household claim as she intends to retain the primary residence.
16. The only significant difference between the SOFA and Schedules filed in each of the Debtor's cases was the inclusion of Schedule F [unsecured claims] for her Chapter 7 case and slight changes to Schedule J. [Debtor's expenses.]
17. On September 17, 2001, the UST filed a Motion for Review of Fees Under 11 U.S.C. § 329; Request for Order to Show Cause Why Sanctions Should not be Imposed for Violation of Fed. R. Bankr. P. 9011(b) and Request for a Hearing ("UST's Motion").
18. On September 20, 2001, the Court issued an Order to Show Cause and Notice of Show Cause Hearing based upon the assertions made in the UST's Motion.
19. On or about September 24, 2001, Mr. Kindsfather filed a Response to the UST's Motion.
20. On September 24, 2001, the UST filed Supplemental Facts in Support of the UST's Motion. The Supplemental Facts set forth five additional cases where Mr. Kindsfather obtained attorney's liens for fees related to bankruptcy representation and where he ultimately redeemed his interest in the properties.
21. On December 11, 2001, counsel for Mr. Kindsfather filed an Amended Response to Motion for Review of Fees Et Seq and Response to Supplemental Facts in Support of Motion for Review of Fees.

ADDITIONAL FACTS FROM OTHER CASES WHERE MR. KINDSFATHER OBTAINED AN ATTORNEY'S LIEN FOR SERVICES RELATED TO BANKRUPTCY, THE LIEN WAS NOT DISCLOSED AND MR. KINDSFATHER REDEEMED THE PROPERTY SUBJECT TO THE LIEN⁶ [Footnote in original.]

⁶ The sales figures should not be used to determine net profit, if any, further evidence, if needed, will be provided. [The Court finds that generally, the sales figures should not be used to determine net profit, if any; further evidence will be needed to accurately and finally ascertain the net proceeds or profit derived by

22. On January 25, 2000, Mr. Kindsfather filed a Chapter 13 case for Ms. Carole Hanson, Case No. 00-10712 CEM [case now closed] (he had previously filed a Chapter 13 case for her, Case No. 99-18469 CEM which lasted from July 6, 1999 through March 1, 2000). In Case No. 00-10712 CEM, Mr. Kindsfather was to receive \$1,300 in fees, \$1,000 of which were to be paid through the plan. The debtor valued her home at \$130,000, subject to \$119,000 in mortgages. That case was dismissed on August 29, 2000, because no plan payments were made. Mr. Kindsfather acquired the debtor's residence from the Jefferson County Public Trustee on December 20, 2000 for \$147,973. The same property was sold for \$179,500 by Mr. Kindsfather to Mark and Jessica Kurschinski on March 30, 2001. [Mr. Kindsfather may have profited from the transaction by as much as \$31,627.00, less expenses.]
23. On May 23, 2000, Mr. Kindsfather filed a Chapter 13 petition on behalf of Leon and Sandy Elkins, Case No. 00-16003 MSK [case now closed] (the debtors previously filed a Chapter 13 case in November of 1998 that was dismissed on May 4, 2000, Mr. Robert Carr had been counsel). His fee disclosure states that he charged \$1,374.60 with \$1,185 remaining to be paid through the plan. The debtors' home was valued at \$115,000 on schedule D, and the secured claim appears to be either \$115,000 or \$132,000. On September 18, 2000, the Court confirmed the debtors' plan, but did not award counsel's fees. The case was dismissed on September 26, 2000. Mr. Kindsfather acquired the debtors' residence from the Arapahoe County Public Trustee on February 1, 2001 for \$125,217. The same property was sold to Juan Serrano *et al*, on April 20, 2001, for \$154,000. [Mr. Kindsfather may have profited from the transaction by as much as \$28,783.00, less expenses.]
24. On September 8, 2000, Mr. Kindsfather filed a Chapter 7 petition on behalf of Mark and Graciela Hopkins, Case No. 00-20677 MSK. [Case now closed.] His fee disclosure reveals that he charged \$1,200 for the case and \$500 was received pre-petition. The debtors' home was valued on Schedule D at \$525,000 with \$905,000 in scheduled mortgages. The debtors filed a motion to abandon interest in real property on September 26, 2000, noting that a foreclosure sale had

Mr. Kindsfather in each transaction.]

taken place on June 28, 2000 and the redemption period would expire on November 10, 2000. The motion to abandon was granted on October 20, 2000. On November 22, 2000, Mr. Kindsfather acquired the property from the Jefferson County Public Trustee for \$348,654. The same property was sold for \$399,900 by Mr. Kindsfather to Nicolas and Polly Pelaez on December 19, 2000. The debtors were discharged on December 20, 2000 and their case was closed on January 3, 2001. [Mr. Kindsfather may have profited from the transaction by as much as \$51,246.00, less expenses.]

25. On December 18, 2000 [sic; June 30, 2000,⁷] Mr. Kindsfather filed a Chapter 7 petition on behalf of Terry Platts, Case No. 00-17657 SBB [case now closed] (Mr. Platts previously had two Chapter 13s, Case No. 96-22877 PAC that lasted from October 1996 through February 1997 and Case No. 96-26170 PAC that lasted from December 1996 through July 1997, Mr. John Cimino represented the debtor in those cases). Mr. Kindsfather's fee disclosure indicates that he charged \$1,500 for his representation and received \$300 pre-petition. On Schedule D, the debtor valued his residence at \$165,000 with \$134,415 in mortgages against it. On July 17, 2000, the debtor filed a motion to abandon the residence noting that a foreclosure sale was held on April 19, 2000, and that the redemption period would expire on August 29, 2000. The motion to abandon was granted on August 14, 2000. On September 13, 2000, Mr. Kindsfather acquired the debtor's residence from the Public Trustee for Jefferson County for \$121,972. The property was sold for \$136,450 to Annetta Platts on October 2, 2000. The debtor received his discharge on October 4, 2000, and the case was closed on December 18, 2000. [Mr. Kindsfather appears to have profited from this transaction by the amount of \$14,478.00, less expenses, or about \$9,665.20.]
26. On April 30, 2001, Mr. Kindsfather filed a Chapter 7 case for Leslie Collins, Case No. 01-16186[-EEB]. On that same date he obtained and filed an attorney's lien on the debtor's residence. He filed an intent to redeem on July 23, 2001. He acquired the property for \$148,802, it was sold on September 19, 2001 and the net sale's price of the property was \$164,494. [Mr. Kindsfather may have profited from this transaction by as much as \$15,692.00, less expenses.]

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Corrected by the parties at commencement of the hearing held December 17, 2001.

**ADDITIONAL FACTS FROM A CASE WHERE MR. KINDSFATHER
OBTAINED THE DEBTORS' RESIDENCE**

27. On May 18, 2001, Mr. Kindsfather filed a Chapter 7 case on behalf of Gary and Bernadeta Potts, Case No. 01-17255 ABC. [Case now closed.] According to the response to question 9 on the Statement of Financial Affairs ("SOFA"), Mr. Kindsfather received \$650 on February 2001 and that is the amount of fees disclosed on the fee statement that were to be charged. The debtors' residence had been sold at a foreclosure sale on February 14, 2001. Reading SOFA response to question 5 with Schedule F, it appears that the residence was valued at \$355,000 and there was a \$65,000 deficiency on the second mortgage. Upon information and belief, the debtors purchased the property for \$255,909 several years before the case was filed. On May 31, 2001, Mr. Kindsfather acquired the debtors' residence from the Arapahoe County Public Trustee for \$267,424 (plus \$30,000 spent to acquire the judgment lien). The debtors received their discharge on August 30, 2001 and the case was closed on September 6, 2001. [The profits, sales proceeds, expenses and related information is not yet reported to the Court.]

**ADDITIONAL FACTS FROM OPEN CASES BEFORE THE HONORABLE
SIDNEY B. BROOKS REGARDING MR. KINDSFATHER'S FEE
DISCLOSURE AND LIEN PRACTICES**

28. *In re Daniels*, Case No. 00-20206 SBB, Chapter 13 case filed on August 29, 2000. A foreclosure sale had been set for August 30, 2000 on the debtor's residence. Attorney compensation was disclosed as a \$1,500 fee of which \$315 had been paid. Counsel obtained an unrecorded attorneys' lien signed by the debtor. Lien was not previously disclosed, but has been included in an Amended Rule 2016(b) Statement and SOFA filed on December 6, 2001. The debtor's plan has been confirmed and fees were awarded on April 6, 2001.
29. *In re Tawney*, Case No. 01-12744 SBB, Chapter 13 case filed on March 9, 2001. A foreclosure sale had been set for March 14, 2001 on the debtor's residence. Attorney compensation was disclosed as \$1,500 fee of which \$315 had been paid. Counsel obtained an unrecorded attorneys' lien signed by the debtor. Lien was not previously disclosed, but has been included in an Amended Rule

2016(b) Statement and SOFA filed on December 6, 2001. The debtor's plan has been confirmed and fees were awarded on August 8, 2001. [The case was dismissed on March 13, 2002 but has not yet been closed.]

30. *In re Martin*, Case No. 01-14848 SBB, Chapter 13 case filed on April 9, 2001. There were two pending foreclose sale dates set for May of 2001 on the debtor's residence. Attorney compensation was disclosed as \$1,500 fee of which \$315 had been paid. Counsel obtained an unrecorded attorneys' lien signed by the debtor. Lien was not previously disclosed, but has been included in an Amended Rule 2016(b) Statement and SOFA filed on December 6, 2001. The debtor's plan has been confirmed and fees were awarded on August 6, 2001.
31. *In re Blea*, Case No. 01-16845 SBB, Chapter 13 case filed on May 11, 2001, voluntarily converted pre-confirmation on or about August 17, 2001. There was a pending foreclosure sale set for May 15, 2001 on the debtor's residence. Attorney compensation was disclosed as \$1,500 fee of which \$315 had been paid. Counsel obtained an unrecorded attorneys' lien signed by the debtor which was recorded on August 17, 2001, but not disclosed prior to December 6, 2001. On August 28, 2001, an Amended Schedule F was submitted by Mr. Kindsfather, no mention is made of any interest held by him in the debtor's property. Disclosure of the lien was included in an Amended Rule 2016(b) Statement and SOFA filed on December 6, 2001. No fees were awarded by the Court for services in the Chapter 13.
32. *In re Joyce*, Case No. 01-20285 SBB, Chapter 13 case filed on July 16, 2001. There was a pending foreclosure sale on the debtor's residence set for July 17, 2001. Attorney compensation was disclosed as \$1,500 fee of which \$315 had been paid. Counsel obtained an unrecorded attorneys' lien signed by the debtor. Lien was not previously disclosed, but has been included in an Amended Rule 2016(b) Statement and SOFA filed on December 6, 2001. No order has entered on fees nor has the plan been confirmed. [The case was dismissed on Debtor's voluntary request on December 26, 2001, and was closed by the Court, in error, on January 30, 2002.]
33. *In re Barrientos*, Case No. 01-21929 SBB, Chapter 13 case filed on August 16, 2001. Attorney compensation was disclosed as a \$1,650

fee of which \$315 had been paid. The redemption period for the debtor's home expired pre-petition and no attorney lien was taken. No order has entered on fees nor has the plan been confirmed. [The plan was confirmed by Order entered January 17, 2002. Fees in the sum of \$1,500.00 and costs in the sum of \$340.31 were approved by Order entered February 19, 2002.]

34. *In re Bakke*, Case No. 01-23250 SBB, Chapter 13 filed on September 11, 2001. A foreclosure sale date of October 30, 2001 was pending on the debtor's residence. Attorney compensation was disclosed as \$1,500 fee of which \$315 had been paid. Counsel obtained an unrecorded attorneys' lien signed by the debtor. Lien was not previously disclosed, but has been included in an Amended Rule 2016(b) Statement and SOFA filed on December 6, 2001. No order has entered on fees nor has the plan been confirmed. [The plan was confirmed by Order entered February 28, 2002. A Certificate of Non-Contested Matter regarding counsel's Fee Application was filed with the Court on March 20, 2002 and remains pending.]
35. *In re Nicholas*, Case No. 01-18937 SBB, Chapter 13 filed on June 19, 2001. A foreclosure sale date of June 20, 2001 was pending on the debtor's residence. Attorney compensation was disclosed as \$1,800 fee of which \$315 had been paid. Counsel obtained an unrecorded attorneys' lien signed by the debtor. Lien was not previously disclosed, but has been included in an Amended Rule 2016(b) Statement and SOFA filed on December 6, 2001. [A status and scheduling conference regarding Debtor's contested Motion to Confirm Chapter 13 Plan was scheduled for October 31, 2001, at which time counsel for Debtor failed to participate. As a result of his failure to appear, the Court issued an Order setting an evidentiary hearing regarding confirmation and consideration of imposition of sanctions as a result of counsel's failure to appear. On December 17, 2001, the Court convened the hearing and (a) took under advisement the issue of whether sanctions should be imposed upon Debtor's counsel for failure to appear, and (b) ruled that an order dismissing the case would enter. That Order of dismissal has not yet entered.⁸]

⁸ The Court shall not issue sanctions as a result of Mr. Kindsfather's failure to appear and an order shall enter concurrently, as well as an order dismissing the Chapter 13 case.

**ADDITIONAL FACTS REGARDING MR. KINDSFATHER'S LIEN AND
FEE DISCLOSURE PRACTICE IN GENERAL FROM 9/17/99-9/17/01**

[Footnote omitted.]

36. Mr. Kindsfather filed an attorney's lien on houses owned by clients for fees related to bankruptcy representation as debtor's counsel related to forty seven cases filed from September 17, 1999 to September 17, 2001. Twenty one liens were filed in 2000, twenty four liens were filed in 2001 and two where filed in 1999. A chart of the cases is **Stipulated Exhibit 8**.
37. Mr. Kindsfather filed Notice of Intent to Redeem in fifteen of the forty seven cases referenced in paragraph 36. In two of the cases the Notice of Intent to Redeem was filed after a motion to abandon property had been filed.
38. In twenty two of the forty seven cases referenced in paragraph 36, an attorney's lien was filed for fees related to services in Chapter 13 cases where no attorney's fee award had been made before the cases were dismissed.
39. In eighteen of the forty seven cases referenced in paragraph 36, Mr. Kindsfather obtained a legal or equitable interest in the debtor's property after the case was filed, but before it was closed.
40. In five of the forty seven cases referenced in paragraph 36, Mr. Kindsfather claims to have held a legal or equitable interest in the real property before the case was filed. Those cases are: *In re Wilburn*, Case No. 00-16674 SBB; *In re Platts*, Case No. 00-17657[-SBB]; *In re Green*, Case No. 00-24354 MSK; *In re Potts*, Case No. 01-17255[-ABC] and *In re Hebb*, Case NO. 01-21595 ABC.
41. In two cases, *In re Hulse*, Case No. 01-17135 ABC and *In re Tuenge*, Case No. 01-16504 ABC, Mr. Kindsfather obtained personal property from the debtors on or about May 15 and May 7, 2001, respectively. Both debtors signed titles to vehicles to Mr. Kindsfather, once the fees were paid in full, the titles were released. The transfer of the vehicle was disclosed on the Rule 2016(b) Statement in *Hulse*, but not in *Tuenge*. Both cases are closed.

B. Court Findings of Fact Regarding Mr. Kindsfather's Lien Statement and Nondisclosure.

From the time he first became licensed to practice in November 1986, Mr. Kindsfather's bankruptcy practice involved representation of debtors in Chapter 7 liquidation cases. In 1998 he started filing Chapter 13 cases. Mr. Kindsfather testified that he put two things in place to assure payment of his attorney fees in Chapter 13 cases: (1) a letter signed by the client asking that any money held by the Chapter 13 Trustee be sent to Mr. Kindsfather's office in the event of a dismissal; and (2) a Lien Statement. The Lien Statement utilized by Mr. Kindsfather included the following language:

I, [client name], do hereby state that I am in full agreement with this attorney lien and that I hereby, with full knowledge and consent, waive the homestead exemption pursuant to §38-41-201, 202 C.R.S., with regard to the aforementioned property and this lien.

Mr. Kindsfather testified that the possibility of paying only part of his fee and signing a Lien Statement, instead of paying the entire fee before the filing of a petition, was routinely discussed during the first client contact. He further testified that the import of the letter to the Chapter 13 Trustee and the Lien Statement were explained, and clients were asked to sign these documents at the time of signing their bankruptcy papers. Although the contents were apparently reviewed with the clients at the time of signing, *no* suggestion was made that the clients consult with independent counsel to review the documents. Both documents were then held in the client's file for later use. If a case was dismissed and there were insufficient funds in the hands of the Chapter 13 Trustee to pay outstanding fees, Mr. Kindsfather would record the Lien Statement. The practice then crept into his Chapter 7 cases, particularly those which began as Chapter 13 cases and ended up as Chapter 7 cases, either by conversion or a subsequent filing.

In the course of these proceedings, Mr. Kindsfather disclosed that perhaps more than 92 bankruptcy cases were filed in which he had the client/debtor sign a Lien Statement.⁹ There are essentially five categories of cases resulting from Mr. Kindsfather's practice of having his consumer bankruptcy clients sign a Lien Statement:

1. cases in which a Lien Statement was signed by the client, but never recorded;

⁹ This recital is based on Mr. Kindsfather's responses to the United States Trustee's discovery requests and Amended Rule 2016(b) Disclosures for 2001 cases, filed in response to this Court's September 2001 Order. Many of these cases are either already closed or are pending before other Judges. In all such cases, it appears that there was no disclosure of Mr. Kindsfather's receipt of a Lien Statement.

2. cases in which a signed Lien Statement was recorded in the real estate records either before a case was filed or after dismissal;
3. cases in which a Lien Statement was recorded during the pendency of a case in violation of the automatic stay;
4. cases in which Mr. Kindsfather filed a Notice of Intent to Redeem in a foreclosure proceeding; and
5. cases in which Mr. Kindsfather actually redeemed and ended up owning his client's home.

Most of Mr. Kindsfather's cases, including most of those before this Court, evidently fall into the first category, those in which a Lien Statement was received, but not recorded.

Mr. Kindsfather's failure to disclose the Lien Statements, directly or indirectly, is undisputed. They were not disclosed to the Court, the United States Trustee, the Chapter 13 Standing Trustee or creditors, whether recorded or unrecorded, in either:

1. The Disclosure of Compensation of Attorney for Debtor pursuant to 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016 ("Rule 2016(b) Disclosure");¹⁰ or
2. The Statement of Financial Affairs ("SOFA");¹¹ or
3. Debtor's Schedules D, E and F, which identify creditors holding secured, priority, and unsecured claims.

Aggravating the nondisclosure aspect of counsel's conduct in these cases is, of course, his failure to timely disclose, or to supplement his disclosure regarding, his (1) filing and recording of Lien Statements, (2) filing of Notices of Intent to Redeem in foreclosure, (3) actual redemption of

¹⁰ The Disclosure of Compensation of Attorney for Debtor ("Rule 2016(b) Disclosure") filed by Mr. Kindsfather contains a "Certification" signed by Mr. Kindsfather which reads as follows: "I certify that the foregoing is a complete statement of any agreement or agreement for payment to me for representation of the debtor(s) in this bankruptcy proceeding."

¹¹ The Lien Statement or related information was *not* disclosed in the Statement of Financial Affairs ("SOFA"), at question number three, "Payments to Creditors"; or at question number six, "Assignments and Receiverships"; or at question number nine, "Payments Related to Debt Counseling or Bankruptcy"; or at question number ten, "Other Transfers."

certain of his clients' homes, and (4) subsequent sale of certain of his clients' homes and reaping not insubstantial profits, sometimes far beyond the fees charged.

C. Court Findings of Fact Regarding Counsel, Conrad Kindsfather.

Mr. Kindsfather is an experienced, knowledgeable, and technically proficient bankruptcy practitioner. There is no question about that. He is an articulate and effective advocate. Counsel has demonstrated to this Court, on many occasions, competence and ability in the practice of bankruptcy law.

Mr. Kindsfather maintains that, essentially, his failure to disclose, or later supplement his disclosures regarding the Lien Statements and acquisition of clients' homes, was a mistake. He has argued that his error was the product of oversight, misunderstanding, or simple negligence.

The Court disagrees. The Court finds and concludes that Mr. Kindsfather did not accidentally, innocently, or through lack of knowledge, fail to disclose these matters. The totality of the circumstances, coupled with Mr. Kindsfather's lack of credibility (discussed below), lead inexorably to this Court concluding that the deception was not mere oversight, misunderstanding or simple negligence.

With regard to Mr. Kindsfather's financial situation, his assets and liabilities, his income and expenses, and his ability to handle an award of sanctions, this Court finds that he is a person of not insubstantial means.

Based on a November 2000 Loan Application signed under oath, Mr. Kindsfather reported that he held an interest in "marital" property as follows:

- ! Real property with equity of \$1,200,000.00;
- ! Stocks and bonds worth over \$200,000.00;
- ! Cash value life insurance of \$50,000.00;
- ! Cash of \$100,000.00;
- ! Four vehicles including a Rolls Royce and a Porsche, valued at \$110,000.00;
- ! Retirement funds worth \$225,000.00; and

- ! Monthly income of \$44,500.00 with estimated living expenses of \$6,000.00 (business expenses are not reported on the Loan Application).

The November 2000 Loan Application thus reflects that Mr. Kindsfather owned, free and clear, approximately \$1,800,000.00 worth of assets¹² in November 2000 and had net monthly income of approximately \$38,500.00.

Mr. Kindsfather produced at trial a type of financial statement for 2001 which generally reflects the information recited above, but the value of assets in several categories is reduced, e.g., six vehicles now valued at \$65,000.00; life insurance cash value of \$35,000.00; stock and bond accounts worth \$117,000.00. He also, in 2001, values his law practice at about \$154,000.00 and a winery, Old Town Winery, at \$50,000.00.

For the year 2001, Mr. Kindsfather reports that his income, “All Income,” was \$414,472.14 and his business expenses, “Total Expenses,” were \$414,472.14. There is no support or corroboration with respect to this information.

The inconsistencies and curiosities of the Loan Application and financial statement submitted to the Court are self-evident and problematic.

Finally, with respect to the issue of credibility and truthfulness, the Court would find and conclude that Mr. Kindsfather is *not* a credible witness. The Court makes this conclusion based on:

- ! Mr. Kindsfather’s conduct, demeanor and testimony in open Court in this case.
- ! The extended and extensive pattern of nondisclosure of material information that was undertaken by a seasoned bankruptcy law practitioner.
- ! The multitude and variety of acts and transactions undertaken by Mr. Kindsfather which show a deliberate effort to insure collection of fees, but conceal the elaborate process by which he collected those fees . . . or acquired his clients’ homes.
- ! Mr. Kindsfather’s initial denial of wrongdoing and subsequent admission of the impropriety of the fee scheme.

¹² These values and net worth do not include a value for Mr. Kindsfather’s law practice and a winery he reported owning in 2001.

- ! The disparity and inconsistencies between the November 2000 verified Loan Application submitted by Mr. Kindsfather and the December 2001 financial statement submitted by him to the Court.
- ! Mr. Kindsfather's secretly acquiring proceeds from his redemption of certain clients' homes and subsequent resale for a gross profit of perhaps \$140,000.00; an amount so greatly exceeding the fees owed by those clients as to be unconscionable (calculated in paragraphs 22-26, *supra*).

IV. DISCUSSION

A. Standard for Disclosure Pursuant to 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b)

Section 329 of the Bankruptcy Code governs debtor's transactions with attorneys and provides:

- (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, **shall file with the court a statement of the compensation paid or agreed to be paid**, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, **and the source of such compensation**.
- (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive to –
 - (1) the estate, if the property transferred –
 - (A) would have been property of the estate; or
 - (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
 - (2) the entity that made such payment.

(emphasis added). The time frames and manner in which the disclosure required by Section 329 must be made are set forth by Fed.R.Bankr.P. 2016(b), which states, in relevant part:

DISCLOSURE OF COMPENSATION PAID OR PROMISED TO ATTORNEY FOR DEBTOR. Every attorney for a debtor,

whether or not the attorney applies for compensation, **shall** file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by §329 of the Code A **supplemental statement shall be filed and transmitted** to the United States trustee within 15 days after any payment or agreement not previously disclosed.

(emphasis added). Although the bankruptcy court does not approve the employment of a Chapter 13 debtor's attorney, it is still incumbent upon every attorney representing a debtor in a Chapter 13 case (or in any other case for that matter) to comply with Section 329 and Fed.R.Bankr.P. 2016(b). *In re Martin*, 197 B.R. 120, 125 (Bankr. D. Colo. 1996); *see also, In re Kisseberth*, 273 F.3d 714, 720 (6th Cir. 2001)(attorney in a bankruptcy case has an affirmative duty to disclose fully and accurately all fee arrangements and payments); *In re Bell*, 212 B.R. 654, 656 (Bankr. E.D. Cal. 1997). Section 329 was adopted specifically because:

Payments to a debtor's attorney provide serious potential for evasion of creditor protection provisions of the bankruptcy laws, and serious potential for overreaching by the debtor's attorney, and should be subject to careful scrutiny.

Land v. First Nat'l Bank of Alamosa (In re Land), 116 B.R. 798, 804 (D. Colo. 1990), *aff'd* 943 F.2d 1265 (10th Cir. 1991); *see also, Turner v. Davis, Gillenwater & Lynch (In re Inv. Bankers, Inc.)*, 4 F.3d 1556, 1565 (10th Cir. 1993), *cert. denied, sub nom, Davis, Gillenwater & Lynch v. Turner*, 510 U.S. 1114, 114 S.Ct. 1061, 127 L.Ed.2d 381 (1994) ("Section 329 is a disclosure provision designed to prevent bankruptcy attorneys from extracting more than their fair share from prospective debtors willing to do whatever is necessary to obtain their counsel of choice and avoid unfavorable bankruptcy proceedings"). As noted by the California Bankruptcy Court in *Bell*, "failure to comply with Rule 2016(b)/Section 329(a) is *particularly significant* in chapter 13 cases because the court does not approve the employment of a chapter 13 debtor's counsel." 212 B.R. at 657 (emphasis added).

Even the case cited by Mr. Kindsfather in his Brief in support of his argument that the Lien Statement procedure does not constitute a conflict of interest, *In re Leitner*, 221 B.R. 502 (Bankr. D. Neb. 1998), acknowledges the need for disclosure. *Leitner* arose from the debtors' motion to set aside a reaffirmation agreement made with their Chapter 7 counsel. In connection with its determination that the reaffirmation agreement should be set aside, the court examined the propriety of counsel's fee arrangement with his client where counsel took a mortgage on his clients' home. While the court did *not* find a conflict of interest or rule that counsel who held a mortgage on his client's home

in a Chapter 7 case was not “disinterested,”¹³ it admonished that disclosure of the fee arrangement was mandatory:

I construe Rule 2016(b) to require disclosure of any lien that secures payment of counsel’s fees. The Rule explicitly requires disclosure of “the source of such compensation.” I hold that a mortgage securing a fee agreement is a potential “source of compensation” which must be disclosed in the Rule 2016(b) statement.

It is clear that the debtor must also disclose the mortgage. A bankruptcy debtor is required to list the name and address of all entities holding claims secured by property of the debtor as of the date of filing of the petition. *See* Schedule D, Creditors Holding Secured Claims. The bankruptcy schedules in this case list Mr. Blackwell as a secured creditor holding a mortgage on the debtors’ real estate to secure a \$1,275.00 debt. The statement of financial affairs also requires disclosure of the mortgage. The debtor must list all payments made or property transferred by or on behalf of the debtor to any person for consultation concerning debt consolidation, relief under the Bankruptcy Code, or preparation of a petition in bankruptcy within one year immediately preceding the commencement of the case. *See* Question Number 9, Statement of Financial Affairs.

Id. at 505.

In the cases before this Court, Mr. Kindsfather utterly failed to meet the disclosure requirements of Section 329 and Fed.R.Bankr.P. 2016(b). He did not disclose the Lien Statements he was taking in his Rule 2016(b) Disclosures. He did not disclose the Lien Statements in the SOFAs,¹⁴ and he was not listed as a creditor in Debtors’ Schedules D and F. Moreover, Mr. Kindsfather never timely filed the required *supplemental statement* regarding the Lien Statements—or the foreclosure, redemption and/or sales of his clients’ homes—until after he was forced to do so by the United States Trustee and the Court.

¹³ The court noted the difference between Chapter 13 where the “estate” pays the attorney fees and a Chapter 7 where the estate does *not* pay the fees.

¹⁴ *See, supra*, note 11.

B. Sanctions for Failure to Comply with the Disclosure Requirements of Section 329 and Fed.R.Bankr.P. 2016(b).

Rule 2017, Fed.R.Bankr.P., sets forth the procedure by which payments to a debtor's attorney are reviewed under Section 329, providing for a court determination of whether the payments or transfers to a debtor's attorney pre- and post-petition are excessive. Courts in this circuit have held that compensation may be considered to be excessive under Section 329 and Fed.R.Bankr.P. 2017 for various reasons, including the size of the fee, the nature of the services provided, failure to disclose information required by Fed.R.Bankr.P. 2016(b), and unethical conduct. *In re Land*, 943 F.2d 1265 (10th Cir. 1991); *In re Vann*, 136 B.R. 863 (D. Colo. 1992), *aff'd* No. 92-1062, 1993 WL 53556 (10th Cir. February 17, 1993).

Numerous courts have held that bankruptcy courts have broad and inherent authority to deny any and all compensation where an attorney fails to satisfy the disclosure requirements of the Code and Rules, regardless of whether the fees charged are determined to be excessive. *See, e.g., Kisseberth*, 273 F.3d at 721-22 (6th Cir. 2001); *In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997); *In re Prudhomme*, 43 F.3d 1000, 1003 (5th Cir. 1995). Simply put, "an attorney who fails to comply with the requirements of §329 forfeits any right to receive compensation for services rendered on behalf of the debtor," and may be ordered to disgorge any payments received. *Turner*, 4 F.3d at 1565 (10th Cir. 1993). This is true even if the noncompliance is unintentional, negligent, or inadvertent. *Vann*, 136 B.R. at 873; *Kisseberth*, 273 F.3d at 721; *In re Park-Helena Corp.*, 63 F.3d 877, 882 (9th Cir. 1995).

A federal court's inherent power to sanction is well established. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (the Supreme Court recognized the inherent power of courts to sanction conduct abusive of the judicial process). Moreover, the Tenth Circuit has recognized that Section 105(a) is intended to empower bankruptcy courts with the inherent powers imbued in the federal district court to sanction conduct abusive of judicial process. *In re Courtesy Inns, Ltd.*, 40 F.3d 1084, 1089 (10th Cir. 1994); *In re Skinner*, 917 F.2d 444, 447 (10th Cir. 1990). Specifically, Section 105(a) enables this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Furthermore, this Court can take any action or make any determination "necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a). *In re Rainbow Magazine, Inc.*, 77 F.3d 278, 284 (9th Cir. 1996) (bankruptcy courts have the inherent power to sanction vexatious and egregious conduct).

So important are the requirements of Section 329 and Fed.R.Bankr.P. 2016(b), that they are not vitiated by the failure to confirm a plan and dismissal of the case. Section 1326(a)(2) requires the Chapter 13 Trustee to return funds held to the debtor if a plan is not confirmed, "after deducting any unpaid claim allowed under § 503(b) of this title." Section 503(b) includes attorneys' fees allowed pursuant to Section 330. In the cases before this Court, however, it appears that Mr.

Kindsfather frequently did not bother to seek approval of his fees under Section 330 if a plan could not be confirmed. Thus, Mr. Kindsfather's practice of having his clients sign a pre-petition letter directing the Chapter 13 Trustee to pay any monies held to him, and then deducting his unpaid fee from such monies prior to returning the balance to the debtor, constitutes yet another possible instance of improper circumvention of the Code provisions vesting oversight of attorney fees in the Court. *In re Marin*, 256 B.R. 503 (Bankr. D. Colo. 2000).

Simply stated: *mandatory statutory disclosure is just that—mandatory*. Case law regarding what is required to be disclosed is clear and plentiful. *Turner*, 4 F.3d at 1565 (the disclosure requirements of 11 U.S.C. § 329 are mandatory and not permissive and an attorney who does not comply with those disclosure requirements forfeits any right to receive compensation for services rendered on behalf of the debtor); *See also, Kisseberth*, 273 F.3d at 721; *In re Independent Engineering, Co.*, 197 F.3d 13, 15-16 (1st Cir. 1999); *Mapother v. Mapother (In re Downs)*, 103 F.3d 472, 477 (6th Cir. 1996); *Peugeot v. United States Trustee (In re Crayton)*, 192 B.R. 970, 977-78 (9th Cir. BAP 1996).

The Court will, in reliance on the above authorities and precedent, impose sanctions against Mr. Kindsfather for failing to disclose—on numerous and repeated occasions—material information relative to attorney fees.

C. Rule 9011, Fed.R.Bankr.P.

Rule 9011(b), Fed.R.Bankr.P., is also implicated by Mr. Kindsfather's filing of SOFAs, Schedules, and Rule 2016(b) Disclosures that did not disclose the transfer of an interest in his clients' property to himself, his holding a Lien Statement or his status as a secured creditor, or his subsequent foreclosure redemptions, or sales of his clients' homes. Rule 9011(c), Fed.R.Bankr.P., provides for the imposition of sanctions for a violation of Fed.R.Bankr.P. 9011(b). Rule 9011(c)(2), Fed.R.Bankr.P., setting forth the limitations on sanctions imposed, states, in relevant part:

A sanction imposed for a violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. . . . [T]he sanction may consist of, or include directives of a non-monetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

The test, standards, and procedures for Fed.R.Civ.P. 11 sanctions in this circuit are set forth in *White v. General Motors Corp.*, 908 F.2d 675, 680 (10th Cir. 1990). First, the conduct is judged by an objective standard. (“An attorneys actions must be objectively reasonable in order to avoid Rule 11 sanctions . . . [the] attorneys belief must also be in accord with what a reasonable attorney would believe under the circumstances.”) *Id.*, at 680.¹⁵ Second, primary goals of the sanction are “detering future . . . abuse” and “punishing present . . . abuse.” (“Deterrence is . . . the primary goal of the sanctions.”) *Id.*, at 683. Third, sanctions other than an award of attorney fees can be considered. Fourth, if monetary sanctions¹⁶ are to be levied, the court must consider a list of circumstances that indicate the appropriateness of the sanction imposed, including whether: (a) the attorney fees are reasonable; (b) the sanction is the minimum that will deter the wrongful conduct; (c) the sanction penalizes the person responsible for the violation; (d) the offender has means to pay; and (e) the sanctions are appropriate considering factors such as the severity of the violation, experience of the violator, and past sanction history. *See also, In re Rossmiller*, 181 B.R. 988 (D. Colo. 1995), *aff’d* No. 95-1249, 1996 WL 175369 (10th Cir. April 15, 1996).

The Court has carefully considered the test and standards specified in *White v. General Motors* and concludes that disgorgement of fees, a monetary assessment, as well as a non-monetary sanction of ethics and continuing legal education requirements, are all appropriate under the circumstances. First, Mr. Kindsfather’s conduct described herein is, by virtually any standard—and certainly by an objective standard—not reasonable under the circumstances. It is simply not reasonable to conclude, here, that a smart, competent and very experienced bankruptcy attorney would believe, over two years, after many cases, and through several foreclosures whereby counsel ended up with his clients’ homes, that disclosure of the information was not necessary and appropriate. In fact, except for a possible isolated mistake or oversight, it is inconceivable to the Court that counsel would refrain from disclosing this type of information.

Second, in order to *deter* this type of misconduct in the future, by Mr. Kindsfather and others similarly situated, a monetary penalty is appropriate. Moreover, because of the serious, blatant and substantial nature of counsel’s misconduct, the Court concludes that a penalty—tailored to fit the circumstances of Mr. Kindsfather and the nature of the wrongdoing—is justified.

Third, simply denying fees or requiring disgorgement of fees is not adequate in this circumstance. It is not sufficient that Mr. Kindsfather simply be deprived only of his ill-gotten compensation and the profits derived from his sales of his clients’ homes. Thus, a penalty is appropriate, as well as a non-monetary sanction of requiring a minimum amount of continuing education in the area of ethics and professionalism in the practice of law.

¹⁵ A court is also “entitled to expect a reasonable level of competence and care on the part of attorneys who appear before it” *White v. General Motors Corp.*, 908 F.2d 675, 683 (10th Cir. 1990).

¹⁶ “[T]he purpose of monetary sanctions is to deter attorney . . . misconduct.” *Id.*, at 685.

Fourth, the sanctions imposed herein are reasonable, reflective of the seriousness of the wrongdoing, and tailored to fit Mr. Kindsfather's situation and financial circumstances. Mr. Kindsfather can afford the sanctions imposed herein.

With respect to the amount and nature of the sanctions imposed herein, and in recognition that penalty sanctions should be assessed only on a person aware of his own wrongdoing, this Court is firmly convinced that Mr. Kindsfather knew very well what he was doing. He knew and understood that disclosure of his Lien Statements, or disclosure of his redemption and/or sale of his clients' homes whereby he reaped profits well beyond the fees he had earned or that the Court had approved was wrong and in violation of the Code and Bankruptcy Rules. And, while applicable law authorizes substantial sanctions for failure to disclose through inadvertence, mistake, oversight, and simple negligence, this Court is convinced, by the totality of the circumstances, that Mr. Kindsfather acted knowingly and willingly when he refrained from disclosing this information. Because he acted, in this Court's opinion, deliberately and with full appreciation of the wrongful nature of his acts and nondisclosure, a serious penalty is appropriate.

D. Conflict of Interest

In addition to the issues under the Bankruptcy Code and Rules, Mr. Kindsfather's undisclosed use of Lien Statements in bankruptcy cases raises the possibility of a conflict of interest which may implicate the Colorado Rules of Professional Conduct. By nature, Chapter 13 debt adjustment presumes that the debtor's counsel will be a creditor of the estate. Sections 1322(a)(2), 507, 503 and 330 of the Bankruptcy Code contemplate payment of approved attorneys' fees through a confirmed plan as an administrative expense.

The situation presented here is different. As opposed to a typical bankruptcy attorney in a Chapter 13 case, who primarily relies only upon payments through the confirmed plan for part of his/her fee, Mr. Kindsfather altered the very nature of the relationship between himself and his clients. By virtue of the Lien Statements, Mr. Kindsfather became an undisclosed secured creditor whose debt was not subject to the homestead exemption in the cases where he had his clients sign a Lien Statement.¹⁷ In the Chapter 7 cases of *In re Cohagan*-

¹⁷ Mr. Kindsfather essentially admitted as much at the hearing:

Q (by Kelly Sweeney): "[B]ut to understand generally if you had a client that came in and an attorney had done work for the client on some real estate matter but had not yet recorded a lien, and you knew that they were a creditor, would you list, even though the lien hasn't been recorded, but the money was owed, would you - - and they had a right to a lien, would you list that on Schedule F, that claim?"

Deubel and *In re Blea*, Mr. Kindsfather was an undisclosed, pre-petition/pre-conversion *secured* creditor. Thus, the normal character of the relationship between Mr. Kindsfather and his bankruptcy clients was changed by the Lien Statement practice. Mr. Kindsfather's interest in getting paid, by whatever means, was adverse to and in conflict with his clients' interests in obtaining debt relief while maximizing available exemptions.

The procedure and practice detailed at the hearing might also violate COLO. RULES OF PROF'L CONDUCT R 1.7(b), which provides, in pertinent part: "A lawyer shall not represent a client if the representation of that client may be materially limited . . . by the lawyer's own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation. . . ." ¹⁸

While it is not clear whether Mr. Kindsfather's actions constitute a violation of RULE 1.7(b), the Lien Statement procedure utilized by Mr. Kindsfather implicates COLO. RULES OF PROF'L CONDUCT R 1.8(a), which provides:

A lawyer shall not enter into a business transaction *or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client* unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can reasonably be understood by the client; (2) the client is informed that use of independent counsel may be advisable and is given a reasonable opportunity to seek the advice of such independent counsel in the transaction; and (3) the client consents in writing thereto.

(emphasis added). Through the use of Lien Statements, Mr. Kindsfather acquired a "security or other pecuniary interest" adverse to his clients. He enhanced his position as a creditor, pre-empted his client's exemption rights, and put himself in the position to end up owning his client's homes. And, it is evident that Mr. Kindsfather did not recommend that his clients consult with independent counsel

A (by Conrad Kindsfather): "I would list that as a general unsecured creditor because the lien was not recorded."

¹⁸ For example, the Colorado Supreme Court found in *People v. Henderson*, 967 P.2d 1038, 1040 (1998), that representing a client in a bankruptcy while having an interest as a creditor was a violation of C.R.P.C. 1.7(b).

regarding the Lien Statement, as required by COLO. RULES OF PROF'L CONDUCT R 1.8(a)(2).¹⁹

A conflict of interest, even one absent bad motive or intent, can justify total disallowance of fees. *See, e.g., Martin*, 197 B.R. at 128; *Vann*, 136 B.R. at 871. *See also, Woods v. City Nat'l Bank & Trust Co. of Chicago*, 312 U.S. 262, 268, 61 S.Ct. 493, 497, 85 L.Ed. 820 (U.S. Ill. 1941) (“Reasonable compensation for services necessarily implies loyal and disinterested service in the interest of those for whom the claimant purported to act. Where a claimant . . . was subject to conflicting interests, he should be denied compensation. It is no answer to say that fraud or unfairness were not shown to have resulted. . . .”) As was noted by the court in *Bell*, “nothing in the Bankruptcy Code relieves an attorney for a chapter 13 debtor from complying with the state rules of professional conduct.” 212 B.R. at 658.

E. Other Related Cases and Damages ²⁰

As referenced earlier, this decision and opinion involves, directly, only those cases pending before the undersigned judge. Numerous similar cases, albeit with different attorney fees, monetary payment and lien circumstances, and redemption and sales figures are pending before other judges in this District. This Order may, or may not, serve as a basis or model for further or similar proceedings the other judges may conduct in their respective cases.

¹⁹ It is also not entirely clear that the transaction and terms on which Mr. Kindsfather was acquiring a lien against a client's home, and could, in due course, actually end up owning the home after foreclosure, were disclosed in a manner which the clients could reasonably understand. Ms. Cohagan-Deubel, who had been a realtor for 30 years at the time she came to Mr. Kindsfather for help, testified that she did not understand that the Lien Statement could be filed against her home or that Mr. Kindsfather could file a Notice of Intent to Redeem. In contrast, three other former bankruptcy clients of Mr. Kindsfather, Mr. Hopkins (closed Case No. 00-20677-MSK), Ms. Saline (Case No. 01-16204-MSK), and Mr. Gerk (Case No. 01-15979-ABC) all testified that they understood Mr. Kindsfather could record the Lien Statement, redeem, and end up owning their homes.

²⁰ Section 362(a)(4) of the Bankruptcy Code provides that the filing of a petition operates as a stay, applicable to all entities, of “any act to create, perfect, or enforce any lien against property of the estate.” In at least one case pending before this Judge, *In re Blea*, Mr. Kindsfather appears to have violated the automatic stay by recording his Lien Statement just prior to conversion of the Chapter 13 case to Chapter 7. Although the recorded Lien Statement was ultimately transferred to the Chapter 7 Trustee, its recording during the pendency of the bankruptcy case only serves to highlight the fact that Kindsfather's primary interest in these cases—above all else, including the requirements of the law and the interests of his clients—was insuring that his fees were paid. This Court's Order and notice of hearing did not notify Mr. Kindsfather that Section 362 issues might be considered so this Court will not impose sanctions pursuant to that section. Having said that, the Court would note that, as indicated in Appendix B, Mr. Kindsfather may have also violated Section 362(a)(4) by recording his Lien Statements during the pendency of a case in 15 additional cases not presently before this Judge and may have violated Section 362(a)(5) in three additional cases by, evidently, recording his pre-petition Lien Statements during the pendency of a case against property which had been abandoned by the estate.

Importantly, this Opinion and Order do *not* specifically and directly deal with (1) imposition of sanctions, or (2) the issue of profits, income, proceeds or other “compensation” that Mr. Kindsfather received resulting from foreclosure, redemption, ownership, or similar transactions he undertook in cases pending before other Judges where he actually acquired his clients’ homes through the lien/foreclosure/redemption process. *See* Appendix B. In only one case where Mr. Kindsfather took title to his client’s home does the undersigned Judge have responsibility: *In re Platts*, Case No. 00-17657-SBB.

V. ORDER

For the reasons set forth above, it is

ORDERED that sanctions shall be and are hereby entered against Conrad R. Kindsfather as follows:²¹

1. *In re Cohagan-Deubel*, Case No. 01-21596-SBB. Mr. Kindsfather shall not be entitled to receive any compensation for his services as counsel to Debtor and shall disgorge all amounts received by him, including, without limitation, \$500.00 in fees. The sum of \$500.00 shall be paid to the Debtor, Donna J. Cohagan-Deubel, within ten (10) days of the date of this Order.
2. *In re Daniels*, Case No. 00-20206-SBB. Mr. Kindsfather shall not be entitled to receive any compensation for his services as counsel to Debtor and shall disgorge all amounts received by him, including, without limitation, \$1,500.00 in fees. The sum of \$1,500.00 shall be paid to the Chapter 13 Trustee for the benefit of the estate, within ten (10) days of the date of this Order.
3. *In re Tawney*, Case No. 01-12744-SBB. Mr. Kindsfather shall not be entitled to receive any compensation for his services as counsel to Debtor and shall disgorge all amounts received by him, including, without limitation, \$1,500.00 in fees. The sum of \$1,500.00 shall be paid to the Debtor, Rhonda J. Tawney, within ten (10) days of the date of this Order.
4. *In re Roybal*, Case No. 01-13419-SBB. Mr. Kindsfather shall not be entitled to receive any compensation for his services as counsel to Debtor and shall disgorge all amounts received by him, including, without limitation, \$2,500.00 in fees. The sum of \$2,500.00 shall be paid to the Debtor, Susan Roybal, within ten (10) days of the date of this Order.

²¹ The Court has tried to be as complete and precise as possible in delineating fees, payments made on fees, and amounts to be disgorged. But, each case and each amount, depending on the status of the case and/or new figures which might be supplied to the Court by Mr. Kindsfather or the Chapter 13 Trustee, might cause an adjustment of selected figures.

5. *In re Martin*, Case No. 01-14848-SBB. Mr. Kindsfather shall not be entitled to receive any compensation for his services as counsel to Debtors and shall disgorge all amounts received by him, including, without limitation, \$1,500.00 in fees. The sum of \$1,500.00 shall be paid to the Chapter 13 Trustee for the benefit of the estate, within ten (10) days of the date of this Order. In the event the balance due, \$500.00, has been paid to Mr. Kindsfather, he shall also pay that sum to the Chapter 13 Trustee for the benefit of the estate, within ten (10) days of the date of this Order.

6. *In re Blea*, Case No. 01-16845-SBB. Mr. Kindsfather shall not be entitled to receive any compensation for his services as counsel to Debtor and shall disgorge all amounts received by him, including, without limitation, \$815.00 in fees. The sum of \$815.00 shall be paid to the Debtor, Tracy L. Blea, within ten (10) days of the date of this Order. In the event the balance due, \$685.00, has been paid to Mr. Kindsfather, he shall also pay that sum to the Chapter 13 Trustee for the benefit of the estate, within ten (10) days of the date of this Order.

7. *In re Nicholas*, Case No. 01-18937-SBB. Mr. Kindsfather shall not be entitled to receive any compensation for his services as counsel to Debtor and shall disgorge all amounts received by him, including, without limitation, \$315.00 in fees. The sum of \$315.00 shall be paid to the Debtor, Marjorie L. Nicholas, within ten (10) days of the date of this Order. In the event the balance due, \$1,485.00, has been paid to Mr. Kindsfather, he shall also pay that sum to the Chapter 13 Trustee for the benefit of the estate, within ten (10) days of the date of this Order.

In addition, the Court shall, by separate orders issued concurrently herewith, (a) dismiss the Chapter 13 case and (b) refrain from issuing sanctions against Mr. Kindsfather as a result of his failure to appear at a scheduling conference on October 31, 2001.

8. *In re Joyce*, Case No. 01-20285-SBB. The case is hereby REOPENED inasmuch it was closed, in error, by the Clerk of the Court. Mr. Kindsfather shall not be entitled to receive any compensation for his services as counsel to Debtor and shall disgorge all amounts received by him, including, without limitation, \$315.00 in fees. The sum of \$315.00 shall be paid to the Debtor, Deborah Joyce, within ten (10) days of the date of this Order. In the event the balance due, \$1,185.00, has been paid to Mr. Kindsfather, he shall also pay that sum to the Chapter 13 Trustee for the benefit of the estate, within ten (10) days of the date of this Order.

9. *In re Rodriguez and Archuleta*, Case No. 01-22160-SBB. Mr. Kindsfather shall not be entitled to receive any compensation for his services as counsel to Debtors and shall disgorge all amounts received by him, including, without limitation, \$1,500.00 in fees. The sum of \$1,500.00 shall be paid to the Chapter 13 Trustee for the benefit of the estate, within ten (10) days of the date of this Order.

10. *In re Bakke*, Case No. 01-23250-SBB. Mr. Kindsfather shall not be entitled to receive any compensation for his services as counsel to Debtor and shall disgorge all amounts received

by him, including, without limitation, \$315.00 in fees. The sum of \$315.00 shall be paid to the Chapter 13 Trustee for the benefit of the estate, within ten (10) days of the date of this Order.

11. *In re Platts*, Case No. 00-17657-SBB. The case is hereby REOPENED. Mr. Kindsfather shall not be entitled to receive any compensation for his services as counsel to Debtor and shall disgorge all amounts received by him, including, without limitation, \$1,500.00 in fees. The sum of \$300.00 shall be paid to the Debtor, Terry Gene Platts, within ten (10) days of the date of this Order. In the event the balance due, \$1,200.00, has been paid to Mr. Kindsfather, he shall also pay that sum to the Chapter 13 Trustee for the benefit of the estate, within ten (10) days of the date of this Order.

IT IS FURTHER ORDERED that Mr. Kindsfather shall disgorge all profit, or net proceeds, which Mr. Kindsfather received from the redemption and sale of his client's home in *In re Platts*, Case No. 00-17657-SBB, an amount estimated to be \$9,665.20, to the Debtor, as and for his exempt homestead interest.

IT IS FURTHER ORDERED that for the repeated and knowing violations of Fed.R.Bankr.P. 9011, Fed.R.Civ.P. 11, and pursuant to the inherent authority of this Court, a sanction in the amount of Twenty Thousand Dollars (\$20,000.00) shall be and hereby is assessed against Conrad R. Kindsfather and is payable to the Clerk of the Court within thirty (30) days after this Order becomes final and non-appealable.

IT IS FURTHER ORDERED that Conrad R. Kindsfather is hereby required to complete ten (10) hours of continuing legal education courses within the next six months, which courses shall embody, as a central theme or topic, legal ethics and professionalism of the practice of law. Mr. Kindsfather shall certify, in writing, his completion of that requirement on or before November 15, 2002, or he shall be barred from filing further cases before this Court.

IT IS FURTHER ORDERED that with respect to *all* cases, whether closed or open, filed in the United States Bankruptcy Court for the District of Colorado, in which Mr. Kindsfather represented the debtor(s) *and* in which cases Mr. Kindsfather obtained a Lien Statement, or otherwise took an interest in or title to property of his clients and failed to disclose the Lien Statement or interest or title, Mr. Kindsfather shall file with the Court, within thirty (30) days after the date of this Order, in each such case, for consideration by the judge assigned to the case,

1. a statement disclosing relevant facts and information regarding attorney fees requested by, or paid to him, Lien Statements obtained, fee agreements with clients, and other matters pertaining to counsel's attorney fees; and

2. financial, transactional, loan, and/or closing documents, if any, regarding each piece of real property to which Mr. Kindsfather acquired an interest, if any, or title.

See, Appendix A.

IT IS FURTHER ORDERED that the Clerk of the Court shall mail a copy of this Order to Debtor(s), counsel for Debtor(s), Mr. Kindsfather, Mr. Kindsfather's counsel, Michael Katch, the Standing Chapter 13 Trustee, and the designated Chapter 7 Trustee in each case.

Dated this 17th day of May, 2002.

BY THE COURT:

/s/
Sidney B. Brooks,
United States Bankruptcy Judge

Appendix A

[With regard to Appendix A, submitted by the parties, the Court notes the following corrections/changes since the parties submitted the chart:

- h. *Shufelt-Evans* was reassigned to the Honorable Donald E. Cordova on May 16, 2000.
- j. *Saline* was reassigned to the Honorable Marcia S. Krieger on May 18, 2000.
- l. *Carter*, Case No. 99-16548-SBB, was filed with the Bankruptcy Court on May 25, 1999.

Carter, Case No. 00-11901, was filed with the Bankruptcy Court on February 25, 2000.
- u. *Shannep* was filed with the Bankruptcy Court on July 11, 2000.
- y. *Jones* was reassigned to the Honorable Marcia S. Krieger on July 7, 2000.
- aa. *Silk*: the correct case number is 00-15346-MSK.
- dd. *Hopkins* is a Chapter 7 case, not a Chapter 13 case. This was corrected by the parties at the commencement of the hearing held December 17, 2001.
- hh. *Carstens* was converted to Chapter 7 on September 12, 2001.
- qq. *Kammann-Trigg* was converted to Chapter 7 on August 16, 2001.
- ss. *Blea* was converted to Chapter 7 on August 15, 2001.
- tt. *Potts* was filed with the Bankruptcy Court on May 18, 2001.]

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
a Nevala 99-21888 RJB 1/31/00 9/21/99	13	2/2/00			X					
b Soeur/Chnoeung 99-21889 DEC 9/20/99 9/21/99	13	3/13/00								
c Tellez 99-23113 SBB 12/3/99 10/19/99	13	12/6/99			X	X				
d Conner 99-24280 MSK 11/12/99 11/16/99	13	6/1/00	8/21/01							

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
e Volesky 99-25223 SBB 12/9/99 12/10/99	13	5/11/00			X					
f Newman 00-10075 MSK 1/4/00 1/4/00	13	6/1/00	7/27/00		X					
g Sisneros 00-10288 SBB 1/23/00 1/11/00	13	8/7/00								
h Shufelt-Evans 00-10664 PAC 10/5/00 1/24/00	13	10/13/00	(redemptio n figures rec'd 12/11/00)		X					

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
i Hanson 00-10712 CEM 8/18/00 1/25/00	13	8/23/00	12/21/00		X	X		12/20/00	\$147,973	\$179,500 (loss of \$2,871.51 after costs of repairs of over \$26,000)
j Saline 00-11182 PAC 2/8/00 2/8/00	13	6/26/00			X					
k Watts 00-11266 SBB 2/9/00 2/10/00	13	1/16/01	5/1/01							
l Carter 99-16548 SBB 00-11901 SBB 5/25/99 9/25/99	13 7	12/2/99								

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
m Soeur 00-13307 DEC 3/24/00 3/28/00	13	8/2/00			X					
n Nickerson 00-13586 MSK 3/30/00 4/3/00	13	4/9/01	6/21/01		X	X				
o Manders 00-13971 CEM 4/10/00 4/11/00	13	10/30/00								
p Rowe 00-14654 SBB 4/24/00 4/25/00	13	10/12/00	1/2/01		X					

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
q Elkins 00-16003 MSK 5/23/00 5/23/00	13	10/11/00	1/9/01					2/1/01	\$125,217	\$154,000 (net profit of \$7,775)
r Minion 00-16523 MSK 6/5/00 6/6/00	13	11/22/00								
s Curry 00-16673 SBB 6/8/00 6/8/00	7	6/8/00		yes			no			

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
t Wilburn 00-16674 SBB 5/30/00 6/8/00	7	6/1/00	6/15/00	yes			X			
u Shannep 00-18027 DEC 7/10/00 7/10/00	13	1/10/01	2/22/01		X					
v Platts 00-17657 SBB 6/29/00 6/30/00	7	6/30/00	6/30/01	yes			X	9/13/00	\$121,972	\$136,450 (net profit of \$8,413)
w McClure 00-18316 SBB 7/17/00 7/17/00	13	1/10/01								

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
x Riley 00-18960 CEM 7/31/00 8/1/00	13	1/16/01								
y Jones 00-12285 PAC 9/15/00 3/6/00	13	9/25/00		yes		X con- verted 10/10/00				
z Fiore 00-19547 CEM 10/23/00 8/15/00	13	10/25/00			X	X				
aa Silk 00-13456 MSK 5/8/00 5/9/00 00-20207 MSK 8/29/00 8/29/00	13	8/4/00 and 1/22/01				X				

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
bb Cataldo 00-20444 SBB 8/31/00 9/5/00	13	6/7/01								
cc Stephens 00-20637 DEC 9/7/00 9/8/00	13	2/9/01	4/30/01		X					
dd Hopkins 00-20677 MSK 9/8/00 9/8/00	13	9/11/00	9/11/00	yes		X	no	11/22/00	\$348,654	\$399,900 (net profit \$21,696)

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
ee Benson 00-21089 ABC 9/18/01 9/19/00	13	5/22/01	8/13/01			X				
ff Iwasa-Koh/Iwasa 00-23659 CEM 11/29/00 11/14/00	13	2/8/01			X					
gg Green 00-24354 MSK 12/1/00 12/1/00	7	12/1/00		yes			Yes			
hh Carstens 00-24972 MSK 12/15/00 12/15/00	13	5/21/01			X	X				

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
ii Mitchell 01-10043 ABC 1/02/01 1/02/01	13	4/9/01			X	X				
jj Espinoza 01-10497 MSK 1/16/01 1/16/01	13	7/27/01			X					
kk Mora 01-10989 SBB 1/29/01 1/30/01	13	9/12/01								
ll Lujan 01-11502 SBB 2/13/01 2/13/01	13	5/24/01			X	X				

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
mm McKittrick 01-11787 ABC 2/20/01 2/20/01	13	7/27/01			X	X				
nn Pereira/Tripathi 01-13420 EEB 3/15/01 3/20/01	13-7	8/17/01			X	X				
oo Stephan 01-13421 MSK 4/13/01 3/20/01	7	4/16/01		yes		X				
pp Beck 01-14850 MSK 4/9/01 4/9/01	13	8/29/01								

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
qq Kammann-Trigg 4/13/01 4/13/01 01-15115 ABC	13	8/17/01			X	X				
rr Collins 01-16186 EEB 4/30/01 4/30/01	7	4/30/01	7/23/01			X		7/23/01	\$148,802	\$164,494 (net sales price)
ss Blea 01-16845 SBB 5/10/01 5/10/01	13	8/17/01			X	X				
tt Potts 01-17255 ABC	7	lien was not attorney's lien	N/A was filed by a judgment creditor			X	Yes	5/31/01	\$297,424 (\$30,000 to buy judgment lien and \$267,424 to redeem)	n/a

Letter from discovery Name Case No. Date signed lien Date case filed	Ch.	Date Lien Filed	Notice of Intent to Redeem	Motion to Abandon filed	Chapter 13 and no fee award before dismissal	Legal or equitable interest obtained after case filed, but before closed	Legal or equitable interest obtained before case was filed	Date title ob- tained	Purchase price	Sale Price
uu Hebb 01-21595 ABC 8/7/01 8/9/01	7	8/7/01	8/9/01				Yes			

Appendix B

The following is a synopsis of certain stipulated facts and testimony of Mr. Kindsfather relative to cases in which Mr. Kindsfather ended up owning his client's home. Mr. Kindsfather's testimony is not, as yet, corroborated or supported by written documents or other evidence. Thus, the recital by him of real property purchase/redemption prices, sales prices, and net proceeds or profits (or losses) he received from selling those homes is not verified or necessarily final and accurate.

1. *In re Hanson*, Case No. 00-10712-CEM, a Chapter 13 case filed on January 25, 2000, thirteen days after dismissal of her previous Chapter 13 case (99-18469-CEM, in which Mr. Kindsfather was also her counsel) on the motion of the mortgage holder. Mr. Kindsfather's fee for the 2000 case was \$1,300.00, of which \$1,000.00 was to be paid through the confirmed plan. The Lien Statement was not disclosed in any fashion. The case was dismissed on August 29, 2000, because no plan payments were made, and the case was closed September 28, 2000. The debtor valued her home at \$130,000.00, subject to \$119,000.00 in mortgages. Mr. Kindsfather redeemed the property from the Jefferson County Public Trustee for \$147,973.00 on December 20, 2000. He sold the house to an independent third party on March 30, 2001 for \$179,500.00. Mr. Kindsfather testified that the house had been vandalized and required an outlay of \$26,685.66 for repairs. After deducting the cost of repairs and interest expense on Mr. Kindsfather's line of credit, he says he had a net loss of \$3,950.00.

2. *In re Elkins*, Case No. 00-16003-MSK, a Chapter 13 case filed on May 23, 2000, twenty-one days after dismissal of their previous Chapter 13 case (98-26564-MSK). The Rule 2016(b) Disclosure lists a fee of \$1,374.60 of which \$1,185.00 was to be paid through the plan. The Lien Statement was not disclosed. A plan was confirmed on September 18, 2000, but no award of counsel's fees was entered. The case was dismissed on September 26, 2000, for noncompliance, and the case was closed October 27, 2000. The debtors valued their home at \$115,000.00 on Schedule D, subject to either \$115,000.00 or \$132,000.00 in mortgages. Mr. Kindsfather recorded his Lien Statement after the dismissal, and redeemed the property from the Arapahoe County Public Trustee on February 1, 2001, for \$125,217.00. The Elkins' remained in the property for some period of time after Mr. Kindsfather acquired the home, paying \$700.00 of the agreed rent of \$1,200.00 per month. Mr. Kindsfather sold the property to independent third parties on April 20, 2001, for \$154,000.00. After deduction of interest expenses and repair costs, Kindsfather made a net profit of \$8,541.28 on the sale.

3. *In re Hopkins*, Case No. 00-20677-MSK, a Chapter 7 case filed on September 8, 2000. The Rule 2016(b) Disclosure lists a fee of \$1,500.00, of which \$500.00 was paid pre-petition. Mr. Kindsfather's Lien Statement was not disclosed. The debtors' home was valued on Schedule D at \$525,000.00, with \$905,000.00 in scheduled mortgages. Mr. Hopkins testified at the December 17, 2001, hearing that several of the mortgages were recorded by him, purportedly at Mr. Kindsfather's suggestion, in order to extend the redemption period as the home had gone to foreclosure sale on June 28, 2000. Mr. Hopkins further testified that most of the liens he recorded did not reflect real obligations. The debtors filed a motion to abandon the home in the Chapter 7 case, which was granted on October 20, 2000. When the holder of the second mortgage did not redeem, Mr. Kindsfather

redeemed the property from the Jefferson County Public Trustee on November 22, 2000, for \$348,654.00. Mr. Kindsfather sold the property to a third party for \$399,900.00 on December 19, 2000, a net profit of \$21,696.00, after deduction of the costs of sale, repairs, and utility bills paid by Mr. Kindsfather. The debtors were discharged on December 20, 2000, and the case was closed on January 3, 2001. Mr. Hopkins testified at the hearing that there was an agreement for Mr. Kindsfather to give him 40% of any profit made on the sale of the home, but he did not produce any notes of conversations or other documents to back-up this assertion. Mr. Kindsfather testified that there was never an agreement to split the proceeds from the re-sale of the home.

4. *In re Platts*, Case No. 00-17657-SBB, a Chapter 7 case filed on June 30, 2000, during the redemption period. The Rule 2016(b) Disclosure lists a fee of \$1,500.00, with \$300.00 paid pre-petition. Mr. Kindsfather's Lien Statement and Notice of Intent to Redeem, which were not disclosed in the bankruptcy in any fashion, were recorded on June 30, 2000, some time on the day of filing of the petition. Schedule D lists a value of \$165,000.00 for the residence, with \$134,415.00 in mortgages. On July 17, 2000, the debtor filed a motion to abandon the property, which was granted on August 14, 2000. On September 13, 2000, Kindsfather redeemed the property from the Jefferson County Public Trustee for \$121,972.00. Kindsfather sold the property on October 2, 2000, to Annetta Platts, the debtor's mother, for \$136,450.00, netting a profit of \$9,665.21. The debtor received his discharge on October 2, 2000, and the case was closed on December 18, 2000.

5. *In re Collins*, Case No. 01-16186-EEB, a Chapter 7 case filed on April 30, 2001. Mr. Kindsfather's Lien Statement was recorded on the same day as the bankruptcy filing. The Rule 2016(b) Disclosure lists compensation of \$650.00 received pre-petition. There is no mention of the recorded Lien Statement in the Rule 2016(b) Disclosure, or in the Schedules or SOFA. Mr. Kindsfather recorded a Notice of Intent to Redeem on July 23, 2001, during the pendency of the bankruptcy case. No motion to abandon was filed. Mr. Kindsfather redeemed the property for \$148,802.00 and sold it to a third party on September 19, 2001 for \$164,494.00, netting a profit of \$12,580.00. The debtor received her discharge on August 16, 2001. An Amended Rule 2016(b) Disclosure filed December 10, 2001 identifies \$1,150.00 in compensation. The case has not been closed.

6. *In re Potts*, Case No. 01-17255-ABC, a Chapter 7 case filed on May 18, 2001. This case varies from the five preceding cases as Mr. Kindsfather did not obtain the debtors' home by redeeming a Lien Statement. Although Mr. Potts had come in to talk to Mr. Kindsfather about filing a Chapter 13 case prior to the scheduled foreclosure sale, the debtors' residence was sold at a foreclosure sale on February 14, 2001. Because he had missed the foreclosure sale date, Mr. Kindsfather entered into an agreement with Mr. Potts in settlement of a potential malpractice claim. Pursuant to the settlement, Mr. Kindsfather purchased a \$10,000.00 judgment lien on the property from the judgment lien holder for \$30,000.00. On May 31, 2001, during the pendency of the bankruptcy, Mr. Kindsfather redeemed the property from the Arapahoe County Public Trustee for \$267,424.00 (in addition to the \$30,000.00 spent to acquire the judgment lien). Mr. Kindsfather testified that the debtors continue to live in the house now owned by Mr. Kindsfather, and are trying to work out a refinance of the property to repurchase it. The debtors pay Mr. Kindsfather rent of

\$3,064.00 per month, which Mr. Kindsfather testified covers the debt service, taxes and insurance. Mr. Kindsfather further testified that in addition to providing the debtors with a disclosure of the conflict of interest, he recommended they consult independent counsel about the conflict waiver and the settlement agreement. The Rule 2016(b) Disclosure disclosed a fee of \$600.00 received in February 2001. Although the Schedules and SOFA do not disclose Mr. Kindsfather's purchase of the debtors' home or business relationship as their landlord, Mr. Kindsfather testified that he did discuss at the Section 341 meeting of creditors his purchase of the home and the fact that the debtors were still living in the home, paying some rent, and trying to work out a refinance. The debtors received their discharge on August 30, 2001, and the case was closed on September 6, 2001.

With the exception of *In re Platts* which is before the undersigned Judge, the cases described in this Appendix are not before this Judge for decision.